IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9397 OF 2005

Jabin Akhtar Shirgonkar & Ors. ...Petitioners

Versus

Samshad Iqbal Mukadam & Ors. ...Respondents

Shri P.K.Dhakephalkar, Senior Counsel with Shri R.D.Suryawanshi for the Petitioners.

Shri Ashok S.Kadam with Shri Rakesh Bhatkar for Respondent Nos.1 to 7.

Shri A.H.Palekar, A.G.P for Respondent Nos.8,9 & 13.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 1st FEBRUARY,2006.

JUDGMENT :

1. Rule. Respondent Nos.1 to 7 waive service. Learned A.G.P appears for respondent Nos.8,9 & 13. Service on respondent Nos.10 to 12 dispensed with. Heard finally by consent of parties.

2. The petitioners by this Petition under

Articles 226 and 227 of the Constitution of India, challenge the order dated 26th December, 2005 passed by the Additional Commissioner, Konkan Division in Village Panchayat (V.P) Appeal No.383 of 2005 and the order dated 17th October, 2005 passed by the Additional Collector, Ratnagiri in Grampanchayat Appeal (S.R.) No.35 of 2005.

3. Respondent Nos.1 to 7 filed the above Grampanchayat Appeal invoking the jurisdiction of the Additional Collector under Section 33(5) of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as "Village Panchayat Act"). They are the members of Grampanchayat, Karla, Taluka & District : Ratnagiri. They challenged the elections to the posts of Sarpanch and Upa-Sarpanch of this Grampanchayat. petitioner No.1 was elected as Sarpanch and petitioner No.2 was elected as Upa-Sarpanch of this Grampanchayat in a meeting held on 12th

August, 2005.

4. It is their case that at the elections held on 19th June, 2005 to the said Grampanchayat, 13 members were elected. It is their case that some of them were declared elected unopposed. The result of the said elections was declared on 21st June, 2005.

5. It is further alleged in the Grampanchayat Appeal that the Returning Officer convened a meeting of the Grampanchayat to elect Sarpanch and Upa-Sarpanch thereto. The meeting was adjourned on two occasions and ultimately the same was held on 12th August, 2005 for the aforesaid purpose. It is contended in Appeal/Application that on the appointed date and time, Nine members of the Panchayat attended the meeting. Respondent Nos.1 to 7 requested the Returning Officer to commence the proceedings. However, it is alleged that the Returning Officer

stated that, after all members are present, the proceedings would commence. That was objected to by respondent Nos.1 to 7. The meeting, therefore, commenced. It is alleged further that the Returning Officer informed the members that election would be held by show of hands. According to them, none objected to this course of action and method of election. However, it is alleged that at about 02:15 p.m, the first respondent (i.e. Returning Officer) all of a sudden announced that the elections would be held by secret ballot.

6. It is alleged that nobody had requested to hold the elections by secret ballot. If nobody has demanded voting by secret ballot, then, it was not permissible to adopt that method. However, the Returning Officer persisted and informed respondent Nos.1 to 7 that the manner of holding elections has to be decided by him and he would not entertain any objections in

that behalf. It is alleged that when a decision was taken to hold the election by secret ballot, necessary preparations for the same were not undertaken. This aspect was pointed out by respondent Nos.1 to 7 to the Returning Officer. However, he informed respondent Nos.1 to 7 that merely because preparatory steps, to hold election by secret ballot, are not being taken, it does not mean that the meeting has to be postponed or adjourned.

7. The specific averment in Appeal/Application is that since respondent Nos.1 to 7 did not want any obstruction in the election process/programme, they did not object further. In Paras 3 to 8 of the Appeal/application, averments pertaining to breach of procedural requirements for holding a secret ballot have been incorporated. The details pertaining to the Rules, the procedure adopted and infirmities therein have been pointed out. In Para 9 of the

Appeal/Application prayers are that the elections to the posts of Sarpanch and Upa-Sarpanch held on 12th August, 2005 be declared as erroneous and illegal; and re-election be directed for the said posts. This Appeal/Application is filed on 29th August, 2005.

8. The petitioners filed their reply to the Appeal/Application and denied all the averments and allegations therein. They pointed out that the elections to the aforesaid posts were held and completed in accordance with law. It is alleged that because the petitioners have been elected to these posts, respondent Nos.1 to 7 are agitated and only on account of political rivalry the application is made. It was pointed out that respondent Nos.1 to 7 were sitting near the seat of the Returning Officer and it was easily possible for them to notice the events.

9. It is specifically contended that the allegations pertaining to there being no demand to hold a secret ballot, are false. It was pointed out that when the petitioners demanded that the voting be conducted by secret ballot, Sudhakar Bhanaji Chavan, who is Appellant/Applicant No.3 to election petition, supported the demand made by the petitioners herein. Therefore, all allegations and averments in the Appeal/Application are an afterthought and attempt is made to malign the election machinery. The allegations have been made out of frustration and dejection. The petitioners therefore submitted that, in these circumstances, the election appeal be dismissed.

10. The Election Appeal was placed before the Additional Collector, as he is the authority, who can decide any dispute pertaining to the validity of the election of Sarpanch or Upa-Sarpanch. The Additional Collector summoned the records

pertaining to the said elections from the Office of the Tahsildar, Ratnagiri. He also permitted the parties to tender their written arguments. Respondent Nos.1 to 7 appeared before him, so also the petitioners and reiterated their respective contentions. He also took on record replies/written statements of the Returning Officer and the Talathi, Karla. He framed points for consideration viz., whether the act of Returning Officer in holding a secret ballot is in accordance with law or not, and whether he has followed the procedure while holding the elections by secret ballot or not. The other points framed for consideration were incidental to the above. By his order delivered on 17th October, 2005, the Additional Collector held that the decision to hold election by secret ballot is not in accordance with law inasmuch as there was no demand for holding the same by secret ballot. However, he held that while holding a secret ballot the Returning Officer has not violated the

Rules prescribed in that behalf. Although, the Additional Collector concluded that the presence of Deepak Dattram Surve, Ex-Sarpanch at the venue of the meeting was enough to influence the conduct of elections, but, respondent Nos.1 to 7 having not furnished any proof of the results being affected by such presence that issue need not be answered in favour of respondent Nos.1 to 7. It is clear that the Additional Collector's observation about presence of Ex-Sarpanch at the venue of meeting was enough to influence the conduct of election, is indicative of the fact that a demand for secret ballot was indeed made and taken due note of by the Returning Officer. The fact that the procedure was followed is also the case of the Returning Officer. Normally, presumption of official acts being in accordance with the Rules and procedure must, therefore, be applied. However, on the main question/point framed for consideration, viz., secret ballot, the Additional Collector consistent with his

finding that the same was not permissible in law, declared that the elections to the posts of Sarpanch and Upa-Sarpanch stand set-aside and fresh process to complete the same in accordance with law be initiated.

11. The petitioners aggrieved by this judgment and order, preferred Appeal to the Additional Commissioner, Konkan Division, being Village Panchayat (V.P.) Appeal No.383 of 2005. During the pendency of this Appeal, the Additional Commissioner, Konkan Division, stayed the order passed by the Additional Collector. However, after hearing the Advocates appearing for both sides, the Additional Commissioner by his order dated 26th December, 2005 concluded that the Additional Collector’s order does not call any interference and is required to be confirmed. Hence, he proceeded to dismiss the petitioners’ Village Panchayat Appeal.

12. These orders are under challenge in this Petition.

13. Shri Dhakephalkar - learned Counsel appearing for the petitioners submits that the impugned orders are vitiated by an apparent error. He submits that, the Additional Collector as well as the Additional Commissioner mis-directed themselves inasmuch as they assumed erroneously that the main issue, arising out of the election dispute presented by respondent Nos.1 to 7, is permissibility of holding elections by secret ballot. He has taken me through the entire Appeal/Application which was filed by respondent Nos.1 to 7 to challenge the election. He contends that from bare reading of this Appeal, it is abundantly clear that respondent Nos.1 to 7 were not at all agitating the Issue of holding elections by secret ballot, in the absence of a alleged demand to do so. On

the other hand, the said Issue is not at all placed in the forefront. The entire Appeal/Application proceeds on the basis that for holding a secret ballot, separate provisions have been made in the Village Panchayat Rules and those have been violated by the Returning Officer. In the submission of Shri Dhakephalkar if the election is disputed on this ground, then, it was not permissible for the Authorities to proceed on the basis that there is no demand for secret ballot at all. The Authorities below have not noticed the written allegations of respondent Nos.1 to 7. In election matters, parties are not permitted to travel outside their pleadings. The Issue to be decided in such disputes must arise from pleadings. If the pleadings do not highlight the grievances by seting-out material facts and particulars, then, it is not permissible for the Authorities to take-up on themselves the task of scrutinising the elections to Grampanchayats, as if they are exercising

Appellate powers over the decision taken by the Returning Officer. He submits that the Issue that needs to be decided must be projected with proper details and proof must be tendered to support the allegations. If parties are permitted to travel beyond their pleadings in election disputes, then, the entire democratic process and consequently public interest suffers adversely. He submits that elections are not to be interferred lightly and not in the least, at the instance of defeated candidates. He submits that defeated candidates, like respondent Nos.1 to 7, allow the meeting to proceed and the elections to be held by secret ballot and after the result thereof is declared, as it is not in their favour, turn around and make irresponsible and even mischievous allegations against the election machinery. The election machinery then is projected as a guilty party and the contest between the candidates turns into an attack on the fairness and impartiality of the Officers

conducting the elections. The Authorities below who are high powered Revenue Officials, ought to have been aware of a drastic and adverse impact on the morale of the Election Machinery. They should have exercised due care and caution and not interfered with the decision of election machinery, more so, when they do not find that the Rules have been violated.

14. The contesting respondents are represented by Shri Ashok Kadam. He submits that this is a Petition under Articles 226 and 227 of the Constitution of India. This is not a Court of further Appeal. This Court cannot reappreciate and reappraise materials which have been placed before the Authorities and arrive at different conclusion by undertaking such a process. All findings of fact are binding upon this Court.

15. That apart, according to Shri Kadam, the

orders are not vitiated by any errors apparent or perversity, so as to call for interference in Writ jurisdiction. When it was demonstrated to the Authorities that there was no demand for holding elections by secret ballot, then, it was not open for the election machinery to so hold them. Once the mandate of Rule 10(2) has not been followed, then, the entire election is vitiated. The mode of election in normal course is by show of hands and voting by secret ballot is an exception. It is, therefore, necessary for the Authorities to satisfy themselves that an exceptional manner has to be adopted and not the normal method of voting. They have to satisfy themselves as to whether a specific demand is made in that behalf or not. If no demand is made then no departure from the normal method is permissible. He submits that in the instant case, both Additional Collector and Additional Commissioner have concurred that there is no material or evidence indicating any demand being

made for holding elections by secret ballot. Therefore, the finding recorded is based on this premise. If there is no material or proof substantiating the plea or request for holding the elections by secret ballot, then, that mode being adopted, itself vitiates the elections and nothing else be decided. In these circumstances and more particularly in the light of the Rules and a binding decision of the Hon'ble Supreme Court reported in **A.I.R 1994 SC Page-586** (**Jaenendrakumar Phoolchand Daftari Vs. Rajendra Ramsukh Mishra & Ors.**), this is a fit case where the Petition should be dismissed.

16. Shri Kadam contravenes all submissions of Shri Dhakephalkar and relies upon the version of the election machinery placed before the Additional Collector and Additional Commissioner. He submits that the petitioners have proceeded on the basis that main Issue for consideration is

whether any demand was raised for holding the elections by secret ballot and, therefore, they should not be permitted to urge that such a Issue was never placed in the forefront. Therefore, the contentions of the nature advanced by Shri Dhakephalkar, for the first time, before this Court, according to Shri Kadam do not deserve acceptance.

17. This Petition was placed before the learned Vacation Judge on 2nd January, 2006. The petitioners applied for urgent ad-interim reliefs. Respondent Nos.1 to 7 were present through their Advocate; as also the learned A.G.P.. After hearing them, the learned Vacation Judge proceeded to pass the following order :

> "1. This petition impugns the concurrent findings of the two lower authorities setting aside the election to the post of Sarpanch and Upa-Sarpanch to

> village Karla, Taluka & Zilla Ratnagiri. I am informed by parties that the fresh election for the post of Sarpanch and Upa-Sarpanch is to be held today. In the circumstances, it is directed that the election may proceed in accordance with the rules and the result of the election may not be declared and may be kept in a sealed cover and produced before this Court on 11.1.2006. Learned AGP agrees to communicate this order by afternoon today to the concerned authority."

18. In my view, merely because the date of fresh election was notified and the fresh elections to the posts of Sarpanch and Upa-Sarpanch were allowed to be held by this Court, the Petition is not rendered infructuous. More so, in the light of the directions issued by the learned Vacation Judge that result of the election may not be declared and should be kept

in a sealed cover to be produced before this Court, on 11th January, 2006. I have, therefore, refrained from looking at the results of this election, though, the said sealed cover containing the same was produced by the learned A.G.P..

19. In my view, the order passed by this Court at Ad-interim stage, cannot prevent the petitioners from assailing the orders impugned in this Petition nor can such ad-interim measures take away the authority of this Court to consider the submissions on merits. Hence, I am not in a position to accept the contention of Shri Kadam that the sealed cover be opened and the results perused by this Court and only thereafter appropriate orders be passed on the Petition.

20. Despite the ad-interim order Shri Dhakephalkar and Shri Kadam have made the above noted submissions. I, therefore, propose to

render my decision about the legality and validity of the orders impugned in this Petition.

21. With the assistance of Shri Dhakephalkar and Shri Kadam, I have perused the annexures to the Writ Petition, which include dispute Appeal/Application and the impugned orders. I have also perused the affidavit-in-reply, filed on behalf of respondent Nos.1 to 7 together with its annexures. The Bombay Village Panchayats Act, 1958 is an Act to amend and consolidate the law relating to the constitution and administration of Village Panchayats. The Act has been extensively amended and more particularly after the 73rd and 74th amendment to the Constitution of India. The word "Panchayat" is defined in Section 3(14) and means a Panchayat established or deemed to have been established under the Village Panchayats Act. The word "Sarpanch" is defined in Section 3(17). The word "Upa-Sarpanch" is also defined in this provision.

A bare perusal of this definition would mean that these persons have to be elected in accordance with Sections 30, 30A, 44 or 43 of the Act. Section 30 deals with the election of Sarpanch. It provides that the election of Sarpanch shall be held in the first meeting held after every general election and a Sarpanch shall be elected by and from amongst the elected members of the Panchayat. Section 30-A deals with election of Upa-Sarpanch. Section 33, providing for procedure for election of Sarpanch and Upa-Sarpanch, reads as under :

> **33. Procedure for election of Sarpanch and Upa-Sarpanch. --**
>
> (1) On the establishment of a panchayat for the first time under this Act, or on its reconstitution or establishment under Sections 145 and 146, or on the expiry of the term of a panchayat a meeting shall be called on the date fixed under sub-section (1) of Section 28 by the (Collector), for the election of the Sarpanch and Upa-Sarpanch. In the case where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, a meeting shall be called on the date fixed by the (Collector), for

the election of the Sarpanch and Upa-Sarpanch.

(2) The meeting called under sub-section (1) shall be presided over by such officer as the (Collector) may by order appoint in this behalf. The officer aforesaid shall, when presiding over such meeting, have the powers and follow the procedure prescribed, but shall not have the right to vote.

(3) No business other than the election of Sarpanch and Upa-Sarpanch shall be transacted at such meeting.

(4) If in the election of the Sarpanch or Upa-Sarpanch there is an equality of votes, the result of the election shall be decided by lot drawn in the presence of the officer presiding in such manner as he may determine.

(5) In the event of a dispute arising as to the validity of the election of a Sarpanch or Upa-Sarpanch under sub-section (1) (the Officer presiding over such meeting or any member may, within fifteen days from the date of the election, refer the dispute to the Collector for decision. An appeal against the decision of the Collector may within fifteen days from the date of such decision, be filed before the Commissioner, whose decision shall be final. The Collector or Commissioner shall give his decision as far as possible within sixty days of the receipt of the reference, or as the case may be, appeal)."

22. By Section 176 of the Act, power has been conferred upon the State Government to make Rules. The Rules are to be made for carrying into effect the purpose of the Act. The Bombay Village Panchayats Election Rules, 1959 have been framed for the purpose of elections to Village Panchayats; whereas the Bombay Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964 are for the elections to these posts.

23. A reference is being made to these provisions only because the learned Counsel appearing for respondent Nos.1 to 7 urges that Sub-Rule 2 of Rule 10 mandates that the election shall be held by show of hands and only if, any member present at the meeting demands, the voting shall be by secret ballot. He submits that in this case, in the election dispute what was urged was non-compliance with the mandate of this

Sub-Rule. I am unable to accept this contention.

24. There is much substance in the contentions of Shri Dhakephalkar that the Additional Collector and the Additional Commissioner proceeded in the matter without adverting to the averments and allegations in the election dispute. In the election dispute, which runs into about nine paragraphs, in Para No.1 there is a reference to the Panchayat elections. In Para No.2, there is a reference to the date of the meeting to be convened for purpose of holding elections to the posts of Sarpanch and Upa-Sarpanch. Somewhere in middle of Para 2, it is alleged that the Returning Officer all of a sudden announced that the voting would be by secret ballot. However, in this Para it is stated that when such a decision was taken by the Returning Officer, respondent Nos.1 to 7 questioned as to why, in the absence of any demand, the normal method of voting is departed

from. At that time, it is alleged that, the Returning Officer announced that the procedure for election has to be decided by him. By such stand of the Returning Officer, it is alleged that, respondent Nos.1 to 7 were helpless.

25. It is pertinent to note that in Para 2 itself respondent Nos.1 to 7 aver that when the decision to hold election by secret ballot was announced, no arrangements were made for conducting the same. It is further pertinent to note that, in Para 2, respondent Nos.1 to 7 state that they invited the attention of the Returning Officer to the fact that there were no arrangements made for conducting secret ballot. It is alleged that respondent Nos.1 to 7 did not raise objections as that would have meant creating obstructions and interfering with the election programme. In my view, the material facts with regard to the demand, for secret ballot, are not pleaded at all. From a reading

of the dispute itself, it is clear that all Paragraphs i.e. Paras 2 to 9 do not place the Issue of the mode and manner of voting by secret ballot, instead of show of hands in the forefront, but, only non-compliance with the Rules pertaining to holding of secret ballot. In this behalf, it is pertinent to note that the averment in Para 2 is that there was no request to hold voting by secret ballot. Thereafter, there is a reference to a query purportedly raised by respondent Nos.1 to 7 to which the above mentioned reply is given by the Returning Officer. Thus, the averment appears to be a clear afterthought. It is specifically averred by the petitioners in their reply to the election dispute that they demanded voting by secret ballot and their demand was supported by one of the election petitioners (respondent No.3 to this Petition). There is also the version of the Returning Officer before the Additional Collector and Additional Commissioner, wherein he states

that the voting by secret ballot was done in accordance with Rules. If really there was any grievance on this score, the election petitioners would not have averred in the petition that the voting by secret ballot was not in accordance with the Rules.

26. In my view, the Additional Collector and the Additional Commissioner have missed a very vital and fundamental aspect of the matter. They treated the grievance of the petitioners as if the election is vitiated because the normal method of voting, viz., by show of hands, was departed from and more so, in the absence of any demand. They proceeded as if the petitioners are aggrieved by the fact that voting by secret ballot was without any demand from members present in the meeting and, therefore, the election is vitiated. However, at the cost of repetition, it needs to be emphasised that the grievance was not of this nature at all, but,that

the voting by secret ballot was not in accordance with the procedure prescribed for the same. In other words, the real grievance of the election petitioners was that once a decision is taken to hold a secret ballot as a manner of voting, then, procedure prescribed in that behalf needs to be followed and such an aspect is not just a procedural one. The Rules in that behalf are mandatory. If the election petitioners came with such a grievance then it is unnecessary to go back and fault the election machinery for departing from the normal mode of voting and adopting the exceptional one, viz., secret ballot. By allowing the election petitioners to argue the election petition on the basis that the voting by secret ballot is without any demand and therefore the elections are vitiated in law, a gross error has been committed by the Additional Collector and it is not noticed in Appeal by the Additional Commissioner, when it was his plain duty to do so, in law. They have allowed parties

to travel beyond their pleadings and the complaint of Shri Dhakephalkar that there is a mis-direction in law, is therefore justified.

27. It is pertinent to note that the Additional Collector has categorically held that the procedure which is prescribed for holding elections by secret ballot has been followed and there is no breach or violation of the Rules laid-down in that behalf. It is clear that Point No.2 which was framed for consideration by the Additional Collector is "Whether the applicants prove that the procedure adopted by the Returning Officer while conducting poll by secret ballot is proper ?". The finding on this point is that the submissions of respondent Nos.1 to 7 are untenable and mis-conceived. They proceed on the basis as if this is a election where number of voters is large. It is observed by the

Additional Collector that while holding the elections to the posts of Sarpanch and Upa-Sarpanch it is not expected of the election machinery to scrupulously follow the method and procedure at general elections. All that is expected is maintenance of secrecy. In the present case, secrecy has been maintained and respondent Nos.1 to 7 have been unable to substantiate their pleas raised in the election dispute by furnishing any proof. Hence, Point No.2 was answered against respondent Nos.1 to 7. A specific finding has been given that the Returning Officer has fully abided by and properly followed the procedure for conducting a vote by secret ballot. There is no cross-appeal by respondent Nos.1 to 7. Consequently, the Additional Commissioner had no occasion to disturb this finding. Yet, he permitted the parties to make their submissions. He affirmed the order of the Additional Collector in its Entirety. There is no cross-petition by

respondent Nos.1 to 7.

28. In my view, in such state of affairs, it was not permissible for the Authorities to have set-aside the elections for non-compliance of Rule 10(2). Even otherwise, in the absence of material facts, the election dispute should not have been entertained at all. A bare perusal of Rule 10 would indicate that if a election has to be held for said posts, the voting at such election shall be by show of hands. If, however, any member present at the meeting so demands, the voting shall be by ballot. In this case, I have referred to the averments in the election petition, which are hopelessly vague and an afterthought. It is a one sentence averment that no demand was made for voting by secret ballot. The reply of petitioners thereto is that a specific demand was raised by them and thereupon the Returning Officer decided to depart from the normal mode of voting i.e. by show of hands.

Their reply did not stop at mere denial, but, an assertion was made by them that their demand was supported by one of the election petitioners. Both Additional Collector as well as the Additional Commissioner have noted that these statements in the reply are supported by an affidavit of appellant No.2/petitioner No.2 - Nadim Mohammad Solkar. There were other affidavits also filed, apart from the version of the Election Officials. There is no discussion in the orders about the nature of proof tendered by respondent Nos.1 to 7. There is no cross-examination of the deponents of the affidavits by respondent Nos.1 to 7. They have not substantiated their pleas at all. Therefore, by relying upon the minutes of the meeting and absence of any entry therein pertaining to a demand for secret ballot, it was not open for the Additional Collector and Additional Commissioner to render a finding that the election is vitiated.

29. The judgment of the Hon’ble Supreme Court reported in (A.I.R. 1994 SC Page-586)(Supra), brought to my notice by Shri Kadam has been relied upon without appreciating the factual controversy before the Hon’ble Supreme Court. Before the Supreme Court, as would be clear from a perusal of Para 10 of this decision, the controversy was that the assertion in the election petition is not denied. There was a specific allegation that no demand was made to the Presiding Officer by any member of the Panchayat present in the meeting for holding the election by having recourse to secret ballot. This specific allegation in the election petition was not denied by the returned candidate. It is in that situation that the Hon’ble Supreme Court has observed that the minutes which were placed on record are silent. There is no record therein of any demand for vote by ballot. Thus, neither

the averment in the election petition of a specific nature was denied nor the minutes reflected the demand for voting by ballot and in that situation the Hon’ble Supreme Court has held that no reliance can be placed on the minutes. Therefore, the Hon’ble Supreme Court dismissed the Appeal and upheld the decision of the Commissioner as well as the High Court regarding non-compliance with the mandate of Rule 10(2), 13 of the Sarpanch & Upa-Sarpanch Election Rules.

30. This decision of the Hon’ble Supreme Court is distinguishable on facts. Before me, the situation is totally different. There is no specific allegation. In any event, there is complete denial of the said allegation and on the other hand there is a assertion that the petitioners made a specific demand for voting by secret ballot and their demand was supported by one of the election petitioners. In these circumstances, no reliance could have been placed

only on the fact that the minutes are not recording the demand of voting by secret ballot. The question of referring to the minutes would arise only if respondent Nos.1 to 7 substantiate their allegations in the election petition. In the light of the vague averment in the Election Petition and the denial thereof by petitioners herein the burden was on respondent Nos.1 to 7. It is not discharged by them. The Election dispute/Appeal must be read in its entirety. It appears that respondent Nos.1 to 7 did not object to the proceedings at all. However, having lost the elections after participating in the process, allegations are now made out of dejection. Not only they failed to discharge the burden, but, they failed to meet the specific case of the petitioners which is supported by affidavit of petitioner No.2 herein. The version of petitioner No.2 is supported by the election machinery also.

31. Thus, on both counts, viz., by proceeding on a erroneous basis and by ignoring the pleadings and the materials produced, the Additional Collector and the Additional Commissioner have set-aside the election in question. Their orders are vitiated by apparent errors and in the light of my observations, they can safely be termed as perverse. I would be failing in my duty, if in these circumstances, I do not exercise my powers under Articles 226 & 227 of the Constitution of India. These powers are conferred precisely for correcting apparent errors on the face of record and setting aside perverse decisions.

32. The Authorities have failed to discharge their duty in law while deciding the instant election dispute. They should have been aware that disputing an election is not the right of a contesting candidate. Just as a right to vote and contest an election is not a fundamental

right, but, one conferred by a statute so also right to challenge or dispute an election is also a statutory right and must be subjected to the limitations and restrictions placed by it. If elections are to be lightly interfered with, then, the very purpose of elected members expressing their confidence while electing a Head of Panchayat would be defeated and frustrated. The elected members present at the meeting have made their choice. Their decision is not to be interfered with merely because a defeated candidate, as an afterthought, levels irresponsible and frivolous allegations. The allegations are not made against the petitioners, but, the election machinery, which are denied. The election dispute has been entertained lightly and decided casually. This being the position, the impugned orders are wholly unsustainable. It is pertinent to note that the Presiding Officer for the meeting is appointed by the Collector of the District. He is an independent person and

not a representative of the candidates. His decision cannot be brushed aside unless specific allegations are made and cogent and satisfactory materials are produced to substantiate them.

33. In the aforesaid facts and circumstances, there is no need for passing an order of remand. That is not even the request made before me. The petitioners assailed the orders in their entirety and respondent Nos.1 to 7 supported the findings and conclusions.

34. In the result, Rule is made absolute in terms of Prayer Clauses (b) & (c). As consequence of this, petitioner Nos.1 & 2 shall continue as Sarpanch and Upa-Sarpanch respectively of Grampanchayat Karla, Taluka & District : Ratnagiri. However, there shall be no order as to costs.

(S.C.DHARMADHIKARI, J)